

Influence of Fatwa on the judicial system of State of Bahāwālpūr

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ABSTRACT:

During the former era of the State of Bahawalpur the Nawābs were in perpetual conflict with their relatives. The Kehlwar family of Sindh and during the modern era remained under influence of the British. So we can say that the State of Bahawalpur remained under constant foreign influence and the Nawābs did not have chance to rule with liberty and ease. In spite of these facts, the government of the State had many Islamic qualities and there are clear effects of Fatwa on judicial system in both eras.

Fatwa was a permanent department in the judicial system of the State during the initial period. The Muftis themselves were Qāzīs. However in some instances the Fatwā of Muftis proved weaker than the personal suggestions of Nawābs and elites.

In the modern era of the state there was is an intervention of British law in the Islamic judicial system. Modern educated experts of law have been deputed in the place of Muftis and

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scholars. Apparently it was shown that the judicial system was not in contrast to Islamic principles but in reality this system was synonymous with modern Western laws. Some of its clauses and particularly those related to family laws were conformed to the local customs.

That is why it created suspicion among the scholars and they struggled and succeeded in getting some laws changed and in getting rights of people. As a result the system of Fatwā stabilized, Dār ul Sharia'h was established, the post of Muftī was created at government level and the courts gave decisions according to Fatwās. That is why Hazrat Sayed Sulaiman Nidvi said, "Among all the Islamic states of Hindūstān this state is important because its special trait is justice and impartiality and every nation and religion likes it."

So we think that the State of Bahāwalpūr has such ornaments of knowledge, character, civilization and traditions that it is not possible to deny the inevitability of their importance. The most important of these is the Islamic status which is proved in the pages of history.

According to historical evidence, the state of Bahāwalpūr was the last stage of the Muslim Abbasid rule. It happened so that in 1257 AD (686 Hijrī) after the decline of Baghdad, for almost one century, the former Abbasid royal family remained under the Memlūke kingdom in Egypt. After that many Abbasid princes moved to reside in Hindūstān because of the respect and sincerity of the then ruler of Hindustan Muhammad Tughlak bin Ghayyās ūd Din. This continued till the arrival

of Amīr Sulṭān Aḥmad II Abbāssi who came with his tribe and settled in Sindh in 1366 AD (767)⁽¹⁾.

In the beginning of the eighteenth century many local lords of Hindustan became independent because of the gradual decline of Mughal rule and the purchase wake of Sikhs. The governor of Multan, on the intercession of superior saint of Ūch Sharif Makhdōm Abdul Qadir Fifth, appointed a virtuous and brave member of Abbasid family Amīr Ṣḍiq Muhammad Khān First as the lord of Ūch Sharīf and its surrounding area in 1727 AD. (1140 Hijrī)⁽²⁾.

Muhammad Bahāwal Khan 1 was the heir of Amīr Muhammad Sadiq 1. He laid foundation of a new city Bahawalpur near the river Satluj in 1742 AD (about 264 years earlier). After this the whole state was named as Bahāwalpūr.

According to Maulāna Aziz ur Rehman, the author of Tarīkh Ṣubāh Ṣadiq, Baha Ulla'h was a saint of Abbasids during their stay in Sindh who came to be known as Bahawāl Khan⁽³⁾. It can be inferred from this that Bahawāl Khan is in fact abbreviation of Baha Ullah Khan which means 'the Glory of Allah'.

The former state of Bahāwalpūr remained from 1727 to 1955 AD and after that it was merged in Islamic Republic of Pakistan. Fourteen rulers ruled this state⁽⁴⁾. The span of 228 years of rule of this state can be divided into two parts on basis of its judicial system.

1. Initial era 1727-1866 AD (before the intervention of British Government)
2. Latest era 1866-1955 AD (after the intervention of British Government)

It should be clear in the minds of readers that the study of system of Fatwa depends on two institutions of Fatwa i.e. knowledge and education and the educational institutes of Fatwa are of two types:

First: Those institutions which are not directly connected to Fatwa but the theory and practice of Fatwa is included in the education of these institutions which is called Dars-e-Nizāmī. This education is the base of system of Fatwā and without it the system of Fatwā cannot come into existence. That is why; many scholars attain the position of Mufti after completing Dars-e-Nizāmī because of their personal hard work.

Second: The institutions which permanently instruct the theory and practice of Fatwa and in these institutions Fatwa is instructed for one or two years after the completion of education.

The state of Bahawalpur is that lucky state which had both of these types of institutes in both eras of its rule.

In this research paper the study of system of Fatwa is presented in the context of both eras of rule of the state of Bahāwalpūr in such a way that the education system of both these eras will be presented in the first place and then the evolution of judicial system and the influences of Fatwa on it will be discussed later.

1. Initial Era of Rule:

An introduction to the great personalities and the centers of education behind the Fatwa system of this era is as under:

The second ruler of the state Amīr Muhammad Bahawal Khan was himself a Hafiz-e-Quran⁽⁵⁾. When he established the new city with his own name he invited the families of scholars and the pious people of suburbs to reside in Bahāwalpār⁽⁶⁾. The grandfather of historian scholar Maulānā Aziz

ur Rehman, who resided at the bank of river Ghagra, came to Bahawalpur in the same era at the request of ruler of the state⁽⁷⁾. Likewise Molvī Saleh Muhammad reached there in 1748 AD after migrating from Jalālpār Khākhīān and he was appointed as instructor by the said ruler⁽⁸⁾.

After some years Hazrat Khwajah Noor Muhammad (Kharl) Maharwi (1730-1791 AD), who got education from Delhi, made Maharan Sharif (Chishtian) a center of learning and knowledge⁽⁹⁾. In the same era Maula'na Hassam ud Din of Chalay Wahan was Hafiz-e-Quran and extraordinary scholar. His son Hafiz Emad ud Din was also a brilliant scholar. Likewise there was Maula'na Hafiz Ghulam Murtaza whose sons Hafiz Muhammad Akmal and Hafiz Muhammad Afzal were famous scholars of their time. Hafiz Muhammad Akmal calculated the most difficult problems of inheritance on finger tips⁽¹⁰⁾.

In the same era Hazrat Khwaja Khuda Bukhsh (1737-1835 AD) established an institution in Khairpur Tamewali where Tafseer, Hadith, Fiqh and other subjects were taught⁽¹¹⁾. Amongst those saints was a pious scholar Khwajah Muhammad Aqil Korejah (1738-1814 AD). He established a high level madrassah in Kot Mithan and it produced many learned scholars and one of those scholars is Khwajah Ghulam Fareed⁽¹²⁾.

Nawab Mubarik Khan (1749-1776) founded a madrassah in Bahāwalpūr city and Jamia Masjid Al Sadiq stands there today⁽¹³⁾.

The time of Nawab Muhammad Bahawal Khan the Second was very outstanding as far as the guardianship of scholars is concerned. In the meanwhile, Hafiz Hifz ul Islam (1802 AD) along with his three brothers (Molvi Faiz ul Islam, Molvi Imam Din, Molvi Ghulam Din) and one son Molvi Moin ud Din came from Lahore and Nawab Sahib gave him a piece of land in Ahmadpur Sharkiah as a gift⁽¹⁴⁾. Nawab Sahib himself attended

the lectures of Hafiz Hifz ul Islam⁽¹⁵⁾. Nawab Şahib also spent most of his time in study and he also established a royal library in Ahmadpur⁽¹⁶⁾.

Sayed Hashim Shah Hamdani (1822) is a notable scholar among those who came from foreign states. He came to Bahawalpur from Kasur in 1781AD and resided in Khairpur Tamiwali (17). Likewise the name of Maula'na Muhammad Asad Ullah is worth mentioning who migrated to Bahawalpur from Maharan Sharif and Nawab Bahawal Khan the Third came to meet him. He was a very prolific writer and his son Maula'na Noor Jahanian became famous afterwards⁽¹⁸⁾.

The famous scholars during the reign of Nawab Fateh Khan (1853-1857 AD) were Molvi Jamil ud Din, Molvi Mahmød ud Din and Molvi Qaim ud Din. Molvi Qaim ud Din was appointed as teacher of Khwajah Ghulam Farid at the order of Nawab Sahib⁽¹⁹⁾.

The judicial system of the initial era and influences of Fatwā on this system:

Ameer Bahawal Khan the First appointed Sheikh Ghulam Mustafa, an eminent religious scholar, as Qāzi in 1748 AD. His ancestors were the Qazi in Shor Kot. After Sheikh Ghulam Mustafa, his son Qazi Mubarik Mahmood was made Qazi and after him Sheikh Muhammad Azām and Sheikh Ismat Ullah of the same family became Qazi respectively⁽²⁰⁾.

During the reign of Nawab Bahawal Khan the Second, Molvi Hifz ul Islam was appointed Sahahi Khatīb and Qazi and then the posts of Khitabat and Qazi remained in this family ever after. Towards the end of this era Qazi Azīm ud Din (1986 AD) was a member of the same family (21). In addition to this, Mufti Baqa Farooqi of Lahore was brought to

Bahawalpur on the suggestion of Molvi Hifz ul Islam and he was appointed on the post of Mufti⁽²²⁾.

Nawab Sahib gave much importance to the suggestions and decisions of Qazis and Muftis and did not accept any intervention in it from anyone. Once a Hindu used foul speech against Islam and he was sentenced to death⁽²³⁾. If a Qazi committed a mistake he would suspend him from service like he suspended Qazi Moin ud Din and Fakihi ud Din on their negligence⁽²⁴⁾.

Molvi Jamil ud Din Lahori was appointed Qazi ul Quzah in the reign of Nawab Fateh Khan. Likewise Molvi Mehmood ud Din was inducted as Qazi. Molvi Faiz Muhammad and Qazi Ahsan Ullah were posted at the administrative court. In the mean while the Qazis of Uch Sharif were Qazi Khuda Bukhsh and Din Muhammad and Qazi Muhammad Sharif was appointed as their deputy⁽²⁵⁾. Molvi Asad Ullah, Hafiz Muhammad Shuja and Hafiz Muhammad Fazil remained posted on the seat of Qazi and they also had the title of Mufti of the state⁽²⁶⁾.

Initially the judicial system of Bahawalpur State was under the governor of Multan and it was influenced by the Mughal system⁽²⁷⁾. The verdicts of court were according to the teachings of Holy Quran, Hadith and Fiqah. Muftis, who were expert in Fiqah, were deputed by the government for the help of court⁽²⁸⁾. The verdicts of subordinate courts could be challenged in the superior court. However the decision of Qazi ul Quza could be challenged in the court of Nawab Sahib and in such cases he would call the scholars of the area and observe the cas⁽²⁹⁾.

Justice was provided very quickly according to the Islamic custom as the secret reporter of East India Company, Bolio reported to the Governor General in 1837 that in the State of Bahawalpur justice is

provided very quickly. He gave example of a case in which a woman of Mitthan Kot came to Bahāwalpūr with her lover. Two people of her husband's tribe pursued her and killed her lover and the court captured the murderers. It was then investigated whether the husband was among the murderers or not because according to the law of the state if a husband killed the lover of his wife then he was deemed innocent. And when it was discovered that the husband was not among the killers, the court readily decided to sentence the killers to death⁽³⁰⁾.

Besides this the decisions of Hindu minority were taken according to the religious code of Hindus by the Burhmans and Mukhis but the cases related to inhibition were decided according to the Islamic law. Therefore in cases of murder or blasphemy the culprits were sentenced to death⁽³¹⁾. Severe punishments were given in case of rebellion, as Nawab Bahawal the Second got the bodies cut of those who helped his rebel son Wahid Bukhsh in running away⁽³²⁾. Likewise they persecuted their relatives in suspicion of rebellion⁽³³⁾.

But Colonel Minchin has written about the court of Bahawalpur that there was no particular system of judiciary in that era. A police chief or even a policeman had the authority to investigate the crimes. There was no system of food for the prisoners; they used to beg for their survival. The Molvis decided the matters of murder and they only punished with death penalty. Often the murderers ran away and when any member of aristocracy committed a crime no Qazi had the courage to punish him. He even got Fatwa in his favor by giving gifts to the Molvi⁽³⁴⁾.

From the details above it is quite clear that though in the beginning the State of Bahawalpur had no stable government, as it remained under incessant rivalry with their opposing tribe "Kalhwar", but despite this

rivalry the state judicial system was founded on pure Islamic principles⁽³⁵⁾. Well known scholars, pious people and Qazis from the suburbs were invited to the state and educational institutes were established. The eminent scholars of the area were selected. Probably there were no salaries for the Qāzis⁽³⁶⁾ but they were given accommodation and agricultural land. With the passage of time Qāzis were appointed in every area as the necessity of courts increased and then higher courts were established and Qazi ul Quzat were appointed.

Qāzis themselves were Muftis and in spite of this Muftis were appointed by the government for their help. The right of appeal was given against the decisions of Qāzis and the final chance of appeal rested with the court of Nawāb Sahib.

We come to know that the judicial system of the state at that time could not be segregated from the Fatwa system. Moreover, the Fatwa system was a department of the court and whenever any case was appealed in the court of Nawāb Sahib he decided the case according to the advice of scholars. Therefore, the decisions of Muslims and the minorities were established according to the Islamic canons.

As far as the statement of Colonel Minchin is concerned, it seems to be an exaggeration because he wrote that "there was no particular judicial system". However, it has been proved through research that there was a stable judicial system then how can this fact be denied? It can be said that the judicial system had certain flaws. If the statement of Colonel Minchin and the secret report of East India Company is considered then it is proved that the judicial system of that time of the State of Bahāwalpūr was deeply influenced by the Fatwa system and the scholars have collectively tried to decide cases according to Islamic law and Nāwab